

<b>RAJI ABDUS-SALAAM</b>	)	<b>AGBCA No. 99-106-1</b>
<b>d/b/a ONE ON ONE CONSULTING &amp;</b>	)	
<b>DEVELOPMENT CORP.,</b>	)	
	)	
Appellant	)	
	)	
<b>Representing the Appellant:</b>	)	
	)	
Raji Abdus-Salaam	)	
P.O. Box 1751	)	
Lincolnton Station	)	
New York, New York 10037	)	
	)	
<b>Representing the Government:</b>	)	
	)	
Marion T. Cordova	)	
Office of the General Counsel	)	
U. S. Department of Agriculture	)	
Room 2321 South Building	)	
1400 Independence Avenue, S.W.	)	
Washington, D.C. 20250-1400	)	

**RULING ON GOVERNMENT’S MOTION TO DISMISS  
FOR LACK OF JURISDICTION**

January 26, 1999

**OPINION BY ADMINISTRATIVE JUDGE EDWARD HOURY**

This appeal arose from a consultant agreement between the Town of Enfield (Town), Halifax County, North Carolina, and Raji Abdus-Salaam, d/b/a One on One Consulting & Development Corp., of New York, New York (Appellant). The contract, among other things, required Appellant to develop a long-term strategy to spur economic, business, and commercial activity in the Town. The agreement was dated March 1, 1997, and would terminate “July 1998.”

Appellant was notified by letter dated August 24, 1998, that the Town had elected not to extend or renew the contract. Appellant characterized the Town’s action as a wrongful “termination” of the contract and appealed to the Board on the basis that the funding for the contract allegedly originated with the Department of Agriculture. In the Board’s docketing letter, we noted the contract was with the Town and not this Department, and that therefore, the Board had no jurisdiction over the matter, notwithstanding the fact that funding might have originated with this Department. We also noted

that the Board had no authority to grant the equitable relief requested, such as reinstatement of the contract, punitive damages, or debarment of the Town.

Both parties<sup>1</sup> were given an opportunity to respond to the Board's docketing letter. Appellant continued to insist the Board had jurisdiction. The Government filed a Motion to Dismiss for Lack of Jurisdiction.

### **FINDINGS OF FACT**

1. The Appellant and Town entered into a consultant agreement dated March 1, 1997. Among other things, Appellant was required to develop a long-term strategy to spur economic, business and commercial activity, assist in design of a Homeownership Incentive Program, and implement and coordinate a job training program. The contract period was "June 1, 1996-July 1998." The agreement could be terminated by either party with 30 days' written notice. Disputes were to be settled by arbitration in accordance with the rules of the American Arbitration Association. (Consultant Agreement, pages (pp.) 19-23.)

2. The contract provided that any fees and benefits under the contract shall be approved in writing by the U. S. Department of Agriculture or its designated representative as set forth in the Memorandum of Agreement (MOA) for Rural Empowerment Zones and Enterprise Communities executed between the City of Rocky Mount and the Town (Consultant Agreement, p. 21).

3. The MOA is unclear regarding the source of funding. The MOA provides that:

All funds referenced in this Agreement are provided for by the US Department of Agriculture and administered through the North Carolina Department of Social Services (herein called the "Grantor").

(MOA, p. 24.)

4. The MOA also provides that:

WHEREAS, the Grantee [City of Rocky Mount] has applied for and received Title XX Social Services Block Grant [SSBG] funds from the United States Department of Health and Human Services for the EZ/EC program under grant award #CAN: 5-G995521 and Document #G-9501-NC-ECRU; and

---

<sup>1</sup> We presumed, but did not know, that the Department had an interest in limiting its exposure to appeals from contracts that may have been funded by the Department, but which were not awarded by the Department. The Board did not request the Town to enter an appearance.

WHEREAS, the Grantee wishes to engage the Subrecipient [Town] to assist the Grantee in utilizing such funds . . . .

(MOA, p. 24.)

5. By letter dated August 24, 1998, Appellant was notified that the Town of Enfield had elected not to extend or renew the contract. Appellant in its Notice of Appeal alleges that:

The designation of Rural Empowerment Zones/Enterprises communities is done by the Secretary of the Department of Agriculture as authorized by the Taxpayer Relief Act of 1997. The program’s activities and funding are administered through the Office of Community Development - Deputy Administrator (the contractor) with the Rural Development mission of the Department of Agriculture.

The Rural part of the program is administered by USDA as a federal-state-local-private partnership. Local governmental units execute participating agreements which are regulated by the USDA, under a Memorandum of Agreement (MOA) and designation (site) specific grant awards, and contract documents.

(Appellant’s Notice of Appeal, p. 1.)

6. The Government in its Motion to Dismiss for Lack of Jurisdiction states that:

The CDA [Contract Disputes Act, 41 U.S.C. §§ 601-613] applies “to any express or implied contract . . . entered into by an executive agency [41 U.S.C. § 602(a)] . . . . The CDA defines an “executive agency” as:

an executive department as defined in section 101 of Title 5, an independent establishment as defined by section 104 of Title 5 (except that it shall not include the General Accounting Office), a military department as defined by section 102 of Title 5, and a wholly owned Government corporation as defined by section 9101(3) of Title 31, the United States Postal Service, and the Postal Rate Commission (41 U.S.C. § 601(2)).

The parties to the contract giving rise to this appeal are Appellant and the Town of Enfield, Halifax County, North Carolina (“Enfield”). Enfield is not an executive agency as defined in the CDA.

. . . .

The primary role of the USDA in this program is to designate Rural Empowerment Zones and Enterprise Communities. The funding for these block grants at the heart of Appellant’s complaint is U.S. Department of Health and Human

Services funds. These block grants are given to the States, and from the States the grants are filtered down to the county level. There is no “network” of USDA contracts governing this program, and the contract that Appellant signed with Enfield is certainly not a USDA contract.

**DISCUSSION**

The Government’s position is correct. Under the CDA, the Board’s jurisdiction is limited to contracts with an executive agency. This contract is based upon grant money, and was entered into by other than an executive agency. Similarly, the Board lacked jurisdiction over a dispute arising from a contract with an irrigation company which in turn was the recipient of Government assistance in the form of a grant. Esco Construction Co., AGBCA No. 95-101-1, 95-1 BCA ¶ 27,324. See also, Diversified Marine International, Inc., AGBCA No. 90-118-1, 91-1 BCA ¶ 23,485; R. W. Beck & Associates, AGBCA No. 85-241-1, 85-3 BCA ¶ 18,344; and Eastern Indemnity Co., AGBCA No. 85-186-1, 85-3 BCA ¶ 18,240.

The facts here clearly show that the dispute arose under a grant-based contract between Appellant and the Town of Enfield, North Carolina. The latter is not an executive agency. It is not clear from the facts that funding originated from this Department or instead from the Department of Health and Human Services. Irrespective of the origin of the funding, it is clear that the funding connection between the Town, as the contracting entity, and the interests of the Department, is not so close or proximate as to render Appellant’s contract as one with an executive agency. The Appellant has not shown otherwise, and has not referenced a contract provision or regulation, that the Board has jurisdiction to resolve the matter.

**RULING**

The Government’s Motion to Dismiss for Lack of Jurisdiction is granted.

---

**EDWARD HOURY**  
Administrative Judge

**Concurring:**

---

**HOWARD A. POLLACK**  
Administrative Judge

---

**JOSEPH A. VERGILIO**  
Administrative Judge

**Issued at Washington, D.C.**  
**January 26, 1999**